

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

<b>BERNIE B. CLEVELAND,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>vs.</b>	)	<b>CIVIL NO. 08-cv-371-DRH</b>
	)	
<b>ROGER E. WALKER, JR., et al.,</b>	)	
	)	
<b>Defendants.</b>	)	

**MEMORANDUM AND ORDER**

**HERNDON, Chief Judge:**

Before the Court is Plaintiff's motion for leave to file an amended complaint (Doc. 6), accompanied by his proposed amended complaint. Federal Rule of Civil Procedure 15(a) dictates that leave to amend a pleading "shall be given whenever justice so requires," *see Sanders v. Venture Stores, Inc.*, 56 F.3d 771, 773 (7<sup>th</sup> Cir. 1995); in fact, the rule expressly grants a plaintiff one opportunity to amend his complaint as a matter of course before a responsive pleading is served. Accordingly, the instant motion is **GRANTED**; the Clerk shall **FILE** Plaintiff's proposed amended complaint.

Plaintiff also requests that the Court appoint him counsel (Doc. 3). There is no absolute right to appointment of counsel in a civil case. *Cook v. Bounds*, 518 F.2d 779 (4<sup>th</sup> Cir. 1975); *Peterson v. Nadler*, 452 F.2d 754 (8<sup>th</sup> Cir. 1971). When presented with a request to appoint counsel, the Court must make the following inquiries: "(1) has the ... plaintiff made a reasonable attempt to obtain counsel or effectively been precluded from doing so and (2) given the difficulty of the case, does the plaintiff appear competent to litigate it himself." *Pruitt v. Mote*, 503 F.3d 647, 854-55 (7<sup>th</sup> Cir.

2007). With regard to the first step of the inquiry, there is no indication at all whether Plaintiff has attempted to obtain counsel or been effectively precluded from doing so. Therefore, Plaintiff's motion for the appointment of counsel is **DENIED**, without prejudice.

Finally, Plaintiff asks that all defendants waive service of summons (Doc. 5). Whether a defendant chooses to waive service is an individual decision that the Court cannot force. Therefore, this motion is **DENIED**.

**IT IS SO ORDERED.**

**DATED: October 2, 2008.**

/s/ David R Herndon  
**CHIEF JUDGE**  
**UNITED STATES DISTRICT COURT**